

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re: St. Jude Medical, Inc. 01-MD-1396 JRT/FLN  
Silzone Heart Valves Products  
Liability Litigation.

Minneapolis, Minnesota  
December 16, 2002  
1:19 p.m.

TRANSCRIPT OF PROCEEDINGS  
(Telephone Status Conference)

BEFORE THE HONORABLE JOHN R. TUNHEIM,  
UNITED STATES DISTRICT COURT JUDGE.

APPEARANCES:

On behalf of plaintiffs	James T. Capretz Steven E. Angstreich Carolyn Lindheim J. Gordon Rudd, Jr.
On behalf of defendant:	Steven M. Kohn David E. Stanley Tracy J. Van Steenburgh Liz Porter

Court Reporter: Karen J. Grufman  
U.S. Courthouse, Suite 1005  
Minneapolis, MN 55415  
612-664-5105.

1 THE COURT: Hi, everyone. Apologize for the delay.

2 Funerals last longer than they sometimes should.

3 We're here for a telephone status conference in civil  
4 case number 01-1396, In Re: St. Jude Medical Silzone Heart  
5 Valves Products Liability Litigation.

6 Counsel, would you note appearances so we get that on the  
7 record.

8 MR. CAPRETZ: Jim Capretz for the class.

9 MR. ANGSTREICH: Steven Angstreich for the class.

10 And Carolyn Lindheim, my partner, is with me.

11 MR. RUDD: Gordon Rudd for the class.

12 MR. STANLEY: David Stanley for St. Jude Medical.

13 MR. KOHN: Steven Kohn for St. Jude Medical.

14 MS. VAN STEENBURGH: Tracy Van Steenburgh for St.  
15 Jude Medical.

16 MS. PORTER: Liz Porter at St. Jude Medical.

17 THE COURT: Okay, very well. Mr. Capretz or Mr.

18 Angstreich, what do we have to go over today?

19 MR. CAPRETZ: We just have a few items, Your Honor.

20 Andy Warhol's "Fifteen Minutes in the Sun" here. But mainly  
21 some discovery issues.

22 Most important, we want to touch bases on the preemption  
23 briefing schedule that the parties have agreed to, and to a  
24 90-day extension of discovery which the parties have agreed  
25 to, subject to the Court's approval.

1 MR. ANGSTREICH: Your Honor, on page six of the  
2 joint status report, we've set forth what we believe to be a  
3 prudent briefing schedule, with the Court's permission:  
4 Plaintiff's opposition on March 21, St. Jude's reply on April  
5 4, and a hearing consistent with Your Honor's schedule the  
6 week of April 7. And that's obviously assuming that there's  
7 not any significant supplemental by way of new experts,  
8 etcetera, in their reply.

9 MR. CAPRETZ: By St. Jude Medical.

10 MR. ANGSTREICH: Right.

11 THE COURT: That's acceptable to St. Jude?

12 MR. STANLEY: Yes, it is, Your Honor.

13 THE COURT: That's fine. The Court will make time  
14 available that week. I think that will probably work this far  
15 out, unless there's any reason for further delay.

16 MR. ANGSTREICH: That would be great, Your Honor.  
17 What we would like to do is put off merits discovery for 90  
18 days from that April date.

19 MR. CAPRETZ: Well, what we're stipulating to, Your  
20 Honor, is that the discovery calendar will be continued for 90  
21 days. In other words, the parties are in agreement that we  
22 could extend the discovery, allowing St. Jude Medical more  
23 time to take the plaintiffs, the various plaintiffs in the MDL  
24 discovery, as well as allowing us to focus on preemption  
25 discovery in the beginning.

1 THE COURT: So it would extend the discovery

2 deadline by 90 days?

3 MR. CAPRETZ: That's right. That's all we're asking

4 is the Court approve a 90-day extension from the date set out

5 in pretrial orders 16 and 20.

6 MR. STANLEY: We've gone a little back and forth. I

7 thought we agreed we would extend the merits discovery date,

8 at least for the initial wave of cases, from the date of the

9 preemption hearing.

10 MR. ANGSTREICH: That's what I thought as well, Your

11 Honor. Quite possibly that was something that David and I

12 spoke about, because Jim was traveling at that moment. But it

13 seemed to make sense that -- I think our discovery deadline

14 was February 3?

15 MR. STANLEY: I think your discovery against us, it

16 was like February 3. Actually, our first wave was due April

17 1, I think.

18 So I think, Your Honor, if the Court can sign off on the

19 concept, we can negotiate a pretrial order with Mr. Angstreich

20 and Mr. Capretz just setting forth the details.

21 MR. CAPRETZ: I would have to have that clarified,

22 Your Honor. Perhaps we didn't communicate well on that

23 particular point.

24 THE COURT: Why don't you discuss that and then

25 simply submit either a proposed order or a status report back

1 to the Court.

2 MR. ANGSTREICH: We will do that, Your Honor.

3 The understanding is also, since we are going forward  
4 with preemption discovery, to the extent that somebody, a St.  
5 Jude person crosses the line between preemption and merit, we  
6 will take merits as well. We will not make somebody come back  
7 a second time.

8 MR. STANLEY: That's fine, Your Honor.

9 THE COURT: Okay, that's good.

10 MR. ANGSTREICH: Your Honor, we have two other  
11 issues. One is the letter that Mr. Stanley wrote you sending  
12 you in camera the e-mail that I tried to explore during Doctor  
13 Flory's deposition. And the second is the resolution of the  
14 EPIC slide -- and it is of epic proportion -- reviewed by our  
15 expert.

16 Turning to the first one, which is relatively easy, I  
17 don't know what it says, and if in fact there is a request for  
18 legal advice from Doctor Flory to Steven Kohn, which is what  
19 has been represented, the e-mail addresses, and nothing else  
20 but that request for legal advice, so that at least that  
21 portion cannot be redacted. I assume I can't get a look at  
22 it.

23 MR. STANLEY: Your Honor, what we've represented is  
24 that, I think it's only one sentence, and references a  
25 discussion with Mr. Kohn. And that's pretty evident from the

1 one sentence there that's been redacted. And we've submitted  
2 that to the Court. Hopefully, that should be a fairly easy  
3 issue to resolve.

4 THE COURT: I have it here, and I have reviewed in  
5 camera. I find that it should not be redacted. I don't see  
6 where it references any type of confidential communications  
7 with Mr. Kohn. It simply mentions the fact that a meeting had  
8 occurred with Mr. Kohn, and a topic that was mentioned which  
9 relates to the rest of the document. And I don't see any  
10 reason for redacting that language. So I'm going to order  
11 that that be unredacted.

12 MR. ANGSTREICH: Thank you, Your Honor.

13 And to the extent that I may have a question or two, I'll  
14 try to propound the question to Doctor Flory by way of a  
15 written request, as opposed to having to reschedule just to  
16 explore that one document.

17 THE COURT: Good.

18 MR. ANGSTREICH: The other one goes to the EPIC  
19 slide issue. There are 2200 EPIC slides, as we understand it.  
20 EPIC is a nonmechanical -- it is a tissue valve that also had  
21 the Silzone Dacron cuff. And it went through a process and  
22 has resulted in the 2200 slides having been created as a  
23 result of issues arising out of that valve.

24 We believe that it is relevant, it will lead to the  
25 discovery of admissible evidence, and our experts should

1 examine these slides.

2 There's a concern about turning over the 2200 slides all  
3 at one time to our expert, because apparently there aren't  
4 sufficient blocks they can cut new slides from. What we  
5 suggest be done is a rolling submission. Because the expense  
6 for our expert to come to Minneapolis for the extended period  
7 of time, it just doesn't make sense. And we haven't lost the  
8 slides that they gave us. And we can do it on some rotating  
9 basis.

10 We also suggested that if there was a log of the slides,  
11 that the expert would review the log first to determine if he  
12 could cull from the listing those slides that he felt he had  
13 to have and those slides that he might not need.

14 And I think, David, did you tell me there was no such  
15 list?

16 MR. STANLEY: What we have is a list of each slide,  
17 which animal it pertains to, and whether or not it had a  
18 Silzone cuff on it or not. That's the extent of the log that  
19 we have.

20 MR. ANGSTREICH: But of the 2200, do they include  
21 slides from nonSilzone valves?

22 MR. STANLEY: Sure.

23 MR. ANGSTREICH: So maybe he can look, if you can  
24 cull it down from 2200 to the Silzone valves.

25 THE COURT: Do you know roughly how many involve

1 Silzone valves?

2 MR. STANLEY: I would have to go back and count,  
3 Your Honor.

4 MR. CAPRETZ: Your Honor, if I may, just to add what  
5 Mr. Angstreich did not say was the obvious, is that this is a  
6 noted doctor and scientist in Toronto. And to require him to  
7 travel to the Minneapolis area to review these slides would be  
8 quite onerous on both his schedule as well as from a burden of  
9 expense. That just does not seem to be a compelling reason  
10 for St. Jude not to produce them, or even a practical reason,  
11 so that he could review them in his clinic in Toronto.

12 MR. STANLEY: Your Honor, if I could just speak.  
13 The plaintiff, in a conference call a week, week or two ago,  
14 suggested as one option that Doctor Wilson come down to  
15 Minneapolis, and we would set him up with whatever equipment  
16 he wanted, and he would look and see exactly which ones he  
17 wanted to take back. And depending on how many there were, we  
18 would authorize him to take them back and review them for a  
19 limited time in his laboratory. I don't think we have a  
20 problem with that.

21 The reason why this is different than the prior request  
22 for the Master Series slides is that this is a product that is  
23 on the market and subject to the regulatory requirements,  
24 several regulatory agencies. And if they request us to  
25 produce slides or whatever, we have to produce them



1 immediately.

2 So this is a very, very different situation from what we  
3 had last time. And again, we're not refusing to make them  
4 available. But we want to do what makes sense, to be able to  
5 preserve these slides.

6 Again, we're willing to set him up with whatever  
7 equipment he needs and let him go back, assuming we're talking  
8 about a limited number, go back with those slides and analyze  
9 in his laboratory.

10 THE COURT: I think that suggestion makes a great  
11 deal of sense. I think it would make sense to have Doctor  
12 Wilson come here first to be able to examine the log that the  
13 defendants have put together and just check out the condition  
14 of the slides. And then at that point, it seems logical if  
15 there's a much reduced number that are really relevant to this  
16 case, or possibly relevant to this case, those can indeed go  
17 back to Toronto for a limited period of time with him. I  
18 think that's makes sense.

19 MR. ANGSTREICH: Your Honor, I think the first step  
20 should be we get the list.

21 MR. STANLEY: We're glad to provide the list.

22 MR. ANGSTREICH: And we will go back to Doctor  
23 Wilson and see if he has any time very shortly that he can do  
24 that. Obviously, it becomes a time constraint issue. And we  
25 will make every effort to accomplish that. If for some reason

1 we have difficulty in getting that arranged, we may have to  
2 come back to Your Honor and see if we can get this thing  
3 reconsidered.

4 THE COURT: That's fine.

5 MR. ANGSTREICH: All right. Those were the issues,  
6 Your Honor.

7 And the last one was for a date in person. Exploring the  
8 14th or the 22nd of January.

9 I have a class action trial that begins the 7th. It  
10 probably will go two weeks. So the 22nd would be best for me.  
11 And I think everybody was looking at their calendars. But  
12 that would be the last item.

13 THE COURT: The 22nd is fine with the Court. What  
14 does everyone else say?

15 MR. STANLEY: That's fine, Your Honor.

16 MR. CAPRETZ: That works all right with us.

17 THE COURT: Lou Jean, should we do the 12:30 again?

18 THE CLERK: Yes.

19 THE COURT: We'll meet on the 22nd at 12:30 in the  
20 courtroom.

21 (End of telephone conference.)

22

23

24 CERTIFIED:

25 Karen J. Grufman  
Official Court Reporter